REMARKS/ARGUMENTS

Claims 1-55 are pending in the application. The Examiner has allowed claims 37-44. Claims 1-3, 5, 6, 14, 19, 23-33, 45-48, 50 and 52-55 are rejected. Claims 4, 7-13, 15-18, 20-22, 34, 36, 49 and 51 are objected to by the Examiner. Applicant has amended claims 3, 37, and 55. Applicant has cancelled claim 52. Applicant respectfully requests reconsideration of pending claims 1-36 and 45-55.

The Examiner has objected to claims 3, 50, 52, and 55 because of alleged informalities. The Examiner requires appropriate correction.

As to claim 3, Applicant has amended claim 3 pursuant to the Examiner's instruction. Applicant submits the amendment is merely cosmetic and does not change the scope of the claim, but is merely intended to correct the noted informality.

As to claim 55, Applicant has amended claim 55 pursuant to the Examiner's instruction. Applicant submits the amendment is merely cosmetic and does not change the scope of the claim, but is merely intended to correct the noted informality.

As to claim 37, Applicant has amended claim 37 in a similar manner. Applicant submits the amendment is merely cosmetic and does not change the scope of the claim, but is merely intended to correct an informality.

As to claims 50 and 52, Applicant has cancelled claim 52. Applicant submits claim 50 is in condition for allowance.

The Examiner 1-3, 5, 6, 14, 19, 23, 27, 29-33, 35, 45-48, 50, 52, 54, and 55 under 35 U.S.C. § 102(b) as allegedly being anticipated by U.S. Patent No. 6,978,398, issued to Harper et al. Applicant respectfully disagrees.

Regarding claims 1 and 54, Applicant submits the cited portion of the cited reference fails to anticipate the subject matter of claims 1 and 54. As one example, Applicant submits col. 2, lines 19-23, of the cited reference, as cited by the Examiner, fails to disclose "identifying a failure predicted one of a plurality of protected system elements." As another example, Applicant submits col. 2, lines 19-23, of the cited reference, as cited by the Examiner, fails to disclose "a plurality of protected system elements." Rather, Applicant submits col. 2, lines 19-23, of the cited reference, as cited by the

Examiner, appears to describe merely "...monitoring the primary node..., determining whether the primary node is failing or is about to fail...." Thus, Applicant submits claims 1 and 54 are in condition for allowance.

Regarding claim 2, Applicant has presented arguments for the allowability of claim 1 from which claim 2 depends. Thus, Applicant submits claim 2 is also in condition for allowance.

Regarding claim 3, Applicant has presented arguments for the allowability of claim 1 from which claim 3 depends. Thus, Applicant submits claim 3 is also in condition for allowance.

Regarding claim 5, Applicant submits the cited portion of the cited reference fails to anticipate the subject matter of claim 5. As one example, Applicant submits the cited portion of the cited reference fails to disclose "...wherein the monitoring the failure prediction parameter further comprises bridging the protection system element across the at least one of the plurality of protected system elements." Rather, the cited portion of the cited reference refers to "...dynamic state updates...," which Applicant does not see the cited reference teaching "...the monitoring the failure prediction parameter further..." comprising. Thus, Applicant submits claim 5 is in condition for allowance.

Regarding claim 6, as Applicant noted with respect to claim 1, from which claim 6 depends, Applicant submits the cited portion of the cited reference fails to Applicant submits the portion of the cited reference cited with respect to claim 1 fails to "identifying a failure predicted one of a plurality of protected system elements." Moreover, Applicant submits the cited portion of the cited reference fails to disclose "...wherein the monitoring the failure prediction parameter further comprises sequentially bridging the protection system element across each of the plurality of protected system elements. Thus, Applicant submits claim 6 is in condition for allowance.

Regarding claim 14, Applicant submits the cited portions of the cited reference fail to anticipate the subject matter of claim 14. As one example, Applicant submits the cited portions of the cited reference fail to disclose "...determining that a failure prediction parameter corresponding to a service agreement parameter for one of said protected system elements has declined to a predetermined minimal acceptable service agreement parameter level." Applicant notes col. 10, lines 12-15, of the Harper '266 reference describe "paging traffic quiesces and CPU utilization fails to zero," neither of which Applicant considers to disclose "...a failure prediction parameter corresponding to a service

agreement parameter for one of said protected system elements has declined to a predetermined minimal acceptable service agreement parameter level." Thus, Applicant submits claim 14 is in condition for allowance.

Regarding claim 19, Applicant submits the cited portions of the cited reference fail to anticipate the subject matter of claim 19. As one example, Applicant submits the cited portions of the cited reference fail to disclose "downloading service information of the failure predicted one of said protected system elements to the protection system element after identifying the failure predicted one of said protected system elements." As Applicant noted with respect to claim 1, from which claim 6 depends, Applicant submits the cited portion of the cited reference fails to Applicant submits the portion of the cited reference cited with respect to claim 1 fails to "identifying a failure predicted one of a plurality of protected system elements." Thus, Applicant submits claim 19 is in condition for allowance.

Regarding claim 23, Applicant submits the cited portions of the cited reference fail to anticipate the subject matter of claim 23. Applicant notes col. 6, lines 21-25, of the cited reference state "...at which time the secondary node becomes the primary node, and the primary node is rebooted and subsequently becomes the secondary node." Thus, Applicant submits claim 23 is in condition for allowance.

As to claim 27, Applicant submits the cited portion of the cited reference fails to anticipate the subject matter of claim 27. Applicant notes col. 9, lines 25-28, of the Harper '266 reference, as cited by the Examiner, states "FIG. 7 illustrates, for example, the growth in consumption over time of a typical resource (e.g., non-paged pool bytes), toward an upper limit." Applicant submits the cited portion of the cited reference fails to disclose "...has exceeded a failure prediction parameter first threshold limit." Thus, Applicant submits claim 27 is in condition for allowance.

As to claim 29, Applicant submits the cited portion of the cited reference fails to anticipate the subject matter of claim 29. Applicant notes col. 6, lines 21-25, of the cited reference state "...at which time the secondary node becomes the primary node, and the primary node is rebooted and subsequently becomes the secondary node." Thus, Applicant submits claim 29 is in condition for allowance.

As to claim 30, Applicant has presented arguments for the allowability of claim 1 from which claim 30 depends. Thus, Applicant submits claim 30 is also in condition for allowance.

As to claim 31, Applicant submits the cited portions of the cited reference fail to anticipate the subject matter of claim 30. As one example, Applicant submits the cited portions of the cited reference fail to disclose "...specifying failure prediction criterion for each of said protected system elements." Applicant submits col. 9, lines 7-14, of the Harper '266 reference, as cited by the Examiner fails to disclose "...for each of said protected system elements." Thus, Applicant submits claim 31 is in condition for allowance.

As to claim 32, Applicant submits the cited portion of the cited reference fails to anticipate the subject matter of claim 32. As one example, Applicant submits the cited portion fails to anticipate "...wherein specifying said failure prediction criterion includes specifying a first type of failure prediction criterion for a first portion of said protected system elements and a second type of failure prediction criterion for a second portion of said protected system elements." Applicant notes the cited portion of the cited reference does not refer to "...a first portion of said protected system elements..." and "...a second portion of said protected system elements." Thus, Applicant submits claim 32 is in condition for allowance.

As to claim 33, Applicant submits the cited portions of the cited reference fail to anticipate the subject matter of claim 33. As one example, Applicant submits the cited portions of the cited reference fail to disclose "wherein specifying said failure prediction criterion includes specifying said failure prediction criterion on a per protected system element basis." Applicant submits the cited portions of the cited reference fail to disclose "...specifying said failure prediction criterion...." Thus, Applicant submits claim 33 is in condition for allowance.

As to claim 35, Applicant submits the cited portion of the cited reference fails to anticipate the subject matter of claim 35. As one example, Applicant submits the cited portions of the cited reference fail to disclose "...wherein identifying the failure predicted one of said protected system elements includes assessing a protection switching operation initiation notification issued via a system administrator user interface." Rather, the cited portion of the cited reference describes "...the system operator...can initiate a graceful planned outage...." Thus, Applicant submits claim 35 is in condition for allowance.

As to claim 45, Applicant submits the cited portions of the cited reference fail to anticipate the subject matter of claim 45. As one example, Applicant submits col. 2, lines 23-26, of the cited reference, as cited by the Examiner, fails to disclose "facilitating a protection switching configuration operation wherein a failure prediction condition for at least a portion of a plurality of protected system elements is defined." As another example, Applicant submits col. 6, lines 18-25, of the cited reference, as cited by the Examiner, fails to disclose "facilitating a failure confirmed protection switching operation in response to identifying that the failure prediction condition for one of said protected has been met during operation of said protected system elements." Rather, col. 6, lines 18-25, of the cited reference describes "If it is determined that the primary node has failed...." As yet another example, Applicant submits col. 4, lines 20-22, of the Harper '266 reference, as cited by the Examiner, fails to disclose "facilitating an administrator-initiated protection switching operation in response to receiving an administrator-issued protection switching initiation notification." Rather, the cited portion of the cited reference describes "...the system operator...can initiate a graceful planned outage...." Thus, Applicant submits claim 45 is in condition for allowance.

As to claim 46, Applicant submits the cited portions of the cited references fail to anticipate the subject matter of claim 46. As one example, Applicant submits col. 9, lines 7-14, of the Harper '266 reference, as cited by the Examiner, fail to disclose "specifying failure prediction criterion for each of said protected system elements." Thus, Applicant submits claim 46 is in condition for allowance.

As to claim 47, Applicant submits the cited portion of the cited reference fails to anticipate the subject matter of claim 47. As one example, Applicant submits the cited portion fails to anticipate "...wherein specifying said failure prediction criterion includes specifying a first type of failure prediction criterion for a first portion of said protected system elements and a second type of failure prediction criterion for a second portion of said protected system elements." Applicant notes the cited portion of the cited reference does not refer to "...a first portion of said protected system elements..." and "...a second portion of said protected system elements." Thus, Applicant submits claim 47 is in condition for allowance.

As to claim 48, Applicant submits the cited portions of the cited reference fail to anticipate the subject matter of claim 48. As one example, Applicant submits the cited portions of the cited reference fail to disclose "wherein specifying said failure prediction criterion includes specifying said failure prediction criterion on a per protected system element basis." Applicant submits the cited portions of

the cited reference fail to disclose "...specifying said failure prediction criterion...." Thus, Applicant submits claim 48 is in condition for allowance.

As to claims 50 and 52, Applicant submits the cited portions of the cited reference fail to anticipate the subject matter of claims 50 and 52. As one example, Applicant submits the cited portions of the cited reference fail to disclose "downloading service information of the failure predicted one of said protected system elements to the protection system element after identifying the failure predicted one of said protected system elements." Applicant submits the cited portion of the cited reference fails to disclose "identifying a failure predicted one of a plurality of protected system elements." Thus, Applicant submits claims 50 and 52 are in condition for allowance.

As to claim 55, Applicant submits the cited portions of the cited reference fail to anticipate the subject matter of claim 55. As one example, Applicant submits col. 9, lines 15-20, of the Harper '266 reference, as cited by the Examiner, fails to disclose "monitoring a failure prediction parameter of at least one of the plurality of protected system elements." As another example, Applicant submits col. 9, lines 15-20, of the Harper '266 reference, as cited by the Examiner, fails to disclose "...thereby identifying a failure predicted one of a plurality of protected system elements when the failure prediction condition is met." As yet another example, Applicant submits col. 2, lines 23-26, of the Harper '398 reference, as cited by the Examiner, fails to disclose "...after identifying the failure predicted one of said protected system elements." As a further example, Applicant submits col. 2, lines 23-26, of the Harper '398 reference, as cited by the Examiner, fails to disclose "confirming failure of the failure predicted one of said protected system elements." Rather, Applicant notes col. 2, lines 22-23, of the Harper '398 reference state "...is failing or about to fail...." Thus, Applicant submits claim 55 is in condition for allowance.

The Examiner has rejected claims 24, 25, 26, 28, and 53 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Harper '398 (which the Examiner states incorporates by reference Harper '398 '266 [sic]) in view of U.S. Patent No. 6,771,440 of Smith. Applicant respectfully disagrees.

As to claim 24, Applicant notes the Smith reference pertains to adaptive event-based predictive analysis measurements in a hard disk drive. Accordingly, Applicant submits the Smith reference is non-analogous art. Moreover, Applicant has presented arguments for the allowability of claims 1 and

19, from which claim 24 depends. Thus, Applicant submits claim 24 is also in condition for allowance.

As to claim 25, Applicant notes the Smith reference pertains to adaptive event-based predictive analysis measurements in a hard disk drive. Accordingly, Applicant submits the Smith reference is non-analogous art. Moreover, Applicant has presented arguments for the allowability of claims 1 and 19, from which claim 25 depends. Thus, Applicant submits claim 25 is also in condition for allowance.

As to claims 26 and 53, Applicant notes the Smith reference pertains to adaptive event-based predictive analysis measurements in a hard disk drive. Accordingly, Applicant submits the Smith reference is non-analogous art. Moreover, Applicant has presented arguments for the allowability of claims 1 and 19, from which claim 26 depends, and claim 45, from which claim 53 depends. Thus, Applicant submits claims 26 and 53 are also in condition for allowance.

As to claim 28, the Examiner states, "Smith discloses a system wherein a first threshold triggers a predictive failure analysis and a second threshold greater than the first threshold signifies a failure (see column 6 lines 6-20)." However, Applicant submits such alleged teaching does not describe "...implementing said protection switching operation...." Thus, Applicant submits claim 28 is also in condition for allowance.

The Examiner has objected to claims 4, 7-13, 15-18, 20-22, 34, 36, 49, and 51 as being dependent upon a rejected base claim, but states they would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Applicant has presented arguments for the allowability of claims from which the objected claims depend. Thus, Applicant submits claims 4, 7-13, 15-18, 20-22, 34, 36, 49, and 51 are in condition for allowance.

The Examiner states claims 37-44 are allowable.

In conclusion, Applicant has overcome all of the Office's rejections, and early notice of allowance to this effect is earnestly solicited. If, for any reason, the Office is unable to allow the Application on the next Office Action, and believes a telephone interview would be helpful, the Examiner is respectfully requested to contact the undersigned attorney.

Respectfully submitted,

_12/18/2006_

Date

Ross D. Snyder, Reg. No. 37,730
Attorney for Applicant(s)
Ross D. Snyder & Associates, Inc.
PO Box 164075
Austin, Texas 78716-4075
(512) 347-9223 (phone)
(512) 347-9224 (fax)